

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RODNEY CROTON,

Plaintiff,

v.

TOM RECKER, et al.,

Defendants.

CASE NO. 11-15433

HON. MARIANNE O. BATTANI

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
TO DISMISS WITH PREJUDICE UNDER FED. R. CIV. P. 41(b)**

This matter is before the Court on the Magistrate Judge's Report and Recommendation ("R&R") to Dismiss Plaintiff's case *sua sponte* with prejudice for failure to prosecute under Fed. R. Civ. P. 41(b). (Doc. 16.) For the reasons that follow, the Court **ADOPTS** the R&R, **GRANTS** Defendants' Motion for Summary Judgment, and **DISMISSES** Plaintiff's Complaint **WITH PREJUDICE**.

I. BACKGROUND

Plaintiff filed a pro se complaint against Defendants on December 12, 2011, alleging the Isabella County Jail Prisoner Mail Policy limited outgoing prisoner mail to only post cards. (Doc. 1.) The matter was referred to Magistrate Judge Hluchaniuk. (Doc. 9.) Defendants filed a Motion for Summary Judgment on February 21, 2012, (Doc. 8) and Plaintiff was ordered to respond by May 25. (Doc. 14.) After receiving no response, the Magistrate Judge ordered Plaintiff to show cause why Defendants' motion should not be granted by July 10. (Doc. 15.) Plaintiff did not respond to the show cause order. (Doc. 16 at 1.)

On July 13, the Magistrate Judge recommended this Court grant Defendants' Motion for Summary Judgment (Doc. 8) and Dismiss Plaintiff's Complaint (Doc. 1) with prejudice for failure to prosecute under Fed. R. Civ. P. 41(b). (Doc. 16.) The Magistrate Judge informed the parties that objections to the R&R must be filed within 14 days of service, and that failure to do so will result in a forfeiture of any further right of appeal. (Id.); E.D. Mich. LR 72.1(d); Thomas v. Arn, 474 U.S. 140 (1985). A district court must conduct a de novo review of the parts of a magistrate judge's report and recommendation to which a party objects. 28 U.S.C. § 636(b)(1). Plaintiff did not respond and neither party objected to the R&R; therefore, the right to *de novo* review and appeal is waived.

II. ANALYSIS

The Magistrate Judge's order for Plaintiff to respond provided that "failure to [file a response] may result in sanctions, including granting all or part of the relief requested by the moving party." (Doc. 16 at 1.) Fed. R. Civ. P. 41(b) allows a federal court to *sua sponte* dismiss a claim "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order." The district court has broad discretion in deciding to dismiss a case for failure to prosecute. Tetro v. Elliot Popham Pontiac, Oldsmobile, Buick, and GMC Trucks, Inc., 173 F.3d 988, 991 (6th Cir. 1999); see also Carter v. City of Memphis, 636 F.2d 159, 161(6th Cir. 1980) (noting that district courts have the power to issue *sua sponte* orders of dismissal for failure to prosecute).

"When contemplating dismissal of an action under Rule 41(b), a court must consider:

(1) whether the party's failure to cooperate is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dilatory conduct of the party; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Tetro, 173 F.3d at 992 (quoting Stough v. Mayville Cmty. Sch., 138 F.3d 612, 615 (6th Cir. 1998)). In the R&R, the Magistrate Judge noted that Plaintiff had been warned several times, it was unknown why Plaintiff did not cooperate, Defendants suffered prejudice by expending resources on an abandoned action, and lesser sanctions would prove useless. (Doc. 16 at 5.) The Court agrees with the Magistrate Judge's analysis. Plaintiff has not responded to any requests for over eight months, failed to object to the R&R, and provided no explanation for his disappearance. Therefore, the Court elects to adopt the R&R in its entirety.

III. CONCLUSION

For the reasons stated above, the Court **ADOPTS** the R&R (Doc. 16), **GRANTS** Defendants' Motion for Summary Judgment (Doc. 8), and **DISMISSES** Plaintiff's Complaint **WITH PREJUDICE** pursuant to Fed. R. Civ. P. Rule 41(b).

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATE: September 7, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of this Order was served upon the Plaintiff via ordinary U.S. Mail, and Counsel for the Defendant, electronically.

s/Bernadette M. Thebolt
Case Manager